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Kevin L. Smith

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ATTORNEYS FOR APPELLEE:

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DERRICK HALL,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0807-CR-634
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 10
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0802-CM-45262

January 13, 2009

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Derrick Hall (Hall), appeals his conviction for resisting law enforcement, as a Class A misdemeanor, Ind. Code § 35-44-3-3, arguing that the State presented insufficient evidence to support his conviction.

We affirm.

ISSUE

Hall presents a single issue for our review: Whether the State presented sufficient evidence to support his conviction.

FACTS AND PROCEDURAL HISTORY

The following is the evidence most favorable to the trial court's judgment. On the morning of February 22, 2008, Indianapolis Metropolitan Police Department Officer Daryl Harden (Officer Harden) was patrolling for drug activity near the intersection of 33rd Street and Central Avenue when he noticed Hall leaning over a vehicle. Officer Harden was in uniform and was driving a marked police car. When Hall saw Officer Harden, he motioned for the vehicle to drive away and then ran into an alley. Officer Harden drove after Hall. Officer Harden spotted Hall walking, and Hall was sweating and panting. Officer Harden "got out of his vehicle, looked directly at [Hall,] and told him to stop and come here." (Transcript p. 7). Hall ran behind a house, but Officer Harden chased him and eventually took him into custody. Later that day, the State filed an Information charging Hall with resisting law enforcement, as a Class A misdemeanor, I.C. § 35-44-3-3. On June 16, 2008, the trial court held a bench trial. The trial court found Hall guilty as charged and sentenced

him to 365 days in jail, with 363 days suspended and credit for two days served, along with 40 hours of community service.

Hall now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Hall argues that the State presented insufficient evidence to support his conviction for resisting law enforcement. Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 213-14 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 214. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

Indiana Code section 35-44-3-3 provides, in pertinent part:

(a) A person who knowingly or intentionally:

. . .

(3) flees from a law enforcement officer after the officer has, by visible or audible means . . . identified himself or herself and ordered the person to stop;

commits resisting law enforcement, a Class A misdemeanor[.]

Officer Harden testified that Hall ran after he “got out of his vehicle, looked directly at [Hall,] and told him to stop and come here.” (Tr. p. 7). When this happened, Officer Harden was in uniform and was patrolling in a marked police car. This evidence was sufficient to

prove beyond a reasonable doubt that Hall knowingly fled from a law enforcement officer after the officer had, by visible or audible means, identified himself and ordered Hall to stop. To the extent that Hall contends that his act of running was lawful because Officer Harden had no reasonable suspicion to ask him to stop, we simply note that the rule in Indiana “is that even if a police officer does not have reasonable suspicion to stop a defendant, the defendant has no right to flee when the officer orders him to stop.” *Cole v. State*, 878 N.E.2d 882, 886 (Ind. Ct. App. 2007). We therefore affirm Hall’s conviction.¹

CONCLUSION

Based on the foregoing, we conclude that the trial court presented sufficient evidence to support Hall’s conviction.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.

¹ As his appellate counsel notes, Hall testified at trial that he could not have run because he weighs 287 pounds. But, as the deputy prosecutor noted, weight alone does not preclude agility. For example, Jeff Saturday of the Indianapolis Colts weighs 295 pounds, and he gets around very well. Hall did not present any evidence, other than his weight, suggesting that he is unable to run.